

### REMARKS

This Amendment is submitted in response to the Office Action dated September 3, 2003, having a shortened statutory period set to expire December 3, 2003. In the present Amendment, Claims 5, 15 and 20 are amended, Claim 10 is cancelled, and Claim 22 is added. Claims 1-9 and 11-22 are now pending.

### CLAIM REJECTIONS UNDER 35 U.S.C. § 103

In paragraph 4 of the present Office Action, the Examiner has rejected Claims 1, 6, 11, 16 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Blumenau (U.S. Patent No. 6,442,659 – "*Blumenau*") in view of Burkes et al. (U.S. Patent No. 5,542,065 – "*Burkes*"). In paragraph 5 of the present Office Action, Claims 2, 7, 12 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Blumenau* in view of *Burkes* and further in view of Schulz et al. (U.S. Patent No. 6,549,995 – "*Schulz*"). These rejections are herewith respectfully traversed, and favorable reconsideration of all pending claims is requested.

The cited prior art does not teach or suggest every claimed feature of the present invention, including those claimed in exemplary Claim 1. Claim 1 claims a method for handling a memory exhaustion condition in a data processing system having a first and second region of physical memory. The "second region is mirroring at least part of said first region." If there is a memory exhaustion condition, the method takes the step of "at least partially deactivating memory mirroring between said first and second regions."

Applicants agree with the Examiner's statement on Page 3 of the present Office Action that *Blumenau* does not teach that the "second region is mirroring at least part of said first region." However, Applicants disagree with the Examiner's statement on Pages 3 and 4 of the present Office Action that this step is taught by *Burkes*.

*Burkes* teaches a Redundant Array of Independent Disks (RAID) disk storage system having a RAID Level 1 (mirroring) component and a RAID Level 5 (parity checking) component. The RAID Level 1 is faster than RAID Level 5 for reconstructing data, but requires more disk space since there is a one-to-one data requirement in the mirroring scheme. However, at some point the RAID Level 1 component may fill up, and so "Data storage system 10 manages

the 'migration' of data between mirror and parity storage scheme." (*Burke*, col. 6, lines 38-39.) That is, there are two independent schemes, into which the storage system decides to place data according to how full the mirror scheme is. There is NO teaching or suggestion that one scheme (mirror RAID) mirrors the other (parity RAID). Thus there is no suggestion of "memory mirroring between said first and second regions." As all limitations of Claims 1, 6, 11, 16 and 21 are not taught by the cited prior art, these rejections should be withdrawn.

Regarding the rejections of Claims 2, 7, 12 and 17, Applicants wish to point out that per the MPEP § 706.02(k), effective November 29, 1999, subject matter which was prior art under 35 U.S.C. § 103 via 35 U.S.C. § 102(e) is disqualified as prior art against the claimed invention if that subject matter and the claimed invention were, at the time the invention was made, owned by the same assignee. The present application, filed on October 18, 2000, was assigned at the time of filing and invention to International Business Machines Corporation, as evidenced by the assignment recordation found at Frame 0585 of Reel 011234 in the USPTO Recordation Section. Likewise, *Schulz* is assigned, as evidenced on its face, to International Business Machines Corporation. *Schulz* was issued on April 15, 2003. Thus, *Schulz* is disqualified as prior art, and the rejections of Claims 2, 7, 12 and 17 should be withdrawn.

#### ALLOWABLE SUBJECT MATTER

Applicants note with appreciation that in paragraph 4 of the present Office Action, the Examiner has indicated that Claims 3-5, 8-10, 13-15 and 18-20 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants thus now submit new Claim 22 incorporating the features of Claim 10 and its base Claim 6. Having thus complied with the Examiner's suggestion, Claim 22 should now be allowed.

**CONCLUSION**

Having amended the now pending claims according to the recommendations of the Examiner, Applicants respectfully request a Notice of Allowance for all pending claims.

The present amendments include an additional independent claim. Thus, please charge **IBM CORPORATION DEPOSIT ACCOUNT No. 50-0563** the amount of **\$84.00** for one additional independent claim.

No extension of time for this response is believed to be necessary. However, in the event an extension of time is required, that extension of time is hereby requested. Please charge any fee associated with an extension of time as well as any other fee necessary to further the prosecution of this application to **IBM CORPORATION DEPOSIT ACCOUNT No. 50-0563**.

Respectfully submitted,



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